

IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW HAMPSHIRE

JEANICE FARLEY, individually  
and on behalf of MICHAEL  
FARLEY, an incompetent adult,

Plaintiff,

VS.

UNITED STATES OF AMERICA,

Defendant

No. 1:13-CV-261-LM

## TRIAL BRIEF – NONECONOMIC DAMAGES

As a result of the Defendant's negligence, Michael Farley suffers from what is known as "locked-in syndrome." Paralyzed from head to toe, Mr. Farley—his mind intact—is imprisoned inside his own body, unable to speak or move other than by blinking his eyes and nodding his head. Mr. Farley is completely dependent on others for every detail of his life. He needs to be fed, bathed, dressed, and transferred. He has profound and painful contractures of his upper and lower extremities. Mr. Farley is incontinent of both bowel and bladder. His condition is permanent. *See* Document #17 at 2 (Jointly Stipulated Statement of Facts).

Mr. Farley's physical pain, suffering, mental anguish, impairment, and physical disfigurement is significant. There is no more frightening and devastating condition than to suddenly become unable to speak, unable to move arms or legs, to walk, to balance, and to do all the activities that make life enjoyable while maintaining the mental function and ability to be fully aware of it. The loss of function is instantaneous, totally

unanticipated, and in many ways dehumanizing. Mr. Farley's awareness of his condition while being unable to communicate his thoughts, feelings, pain, and frustrations to those around him make locked-in syndrome one of the most terrible conditions any person could endure. In addition to Mr. Farley's own suffering, Mrs. Farley has lost much of the closeness and companionship she previously shared with her husband.

Damages in an FTCA case are governed by the applicable state law. *Reilly v. United States*, 863 F.2d 149, 161 (1<sup>st</sup> Cir. 1988). New Hampshire allows plaintiffs to recover a wide range of noneconomic damages in personal injury actions. *Bennett v. Lembo*, 145 N.H. 276, 278-79, 761 A.2d 494, 496-97 (2000). In *Bennett*, the Supreme Court of New Hampshire affirmed a jury instruction that allowed the jury to consider compensation for the reasonable value of medical, hospital, nursing care, services and supplies, reasonable compensation for any pain, discomfort, fears, anxiety or other mental or emotional distress suffered by the Plaintiff, and permanent impairment—compensation for the loss of bodily functions and permanent physical disability to the Plaintiff's body and limbs. *Id.*

#### **I. Non-economic damages in locked-in cases.**

The Plaintiffs have suffered significant noneconomic damages. Although no New Hampshire courts have decided a negligence case involving a locked-in plaintiff, other jurisdictions have awarded noneconomic damages in such cases<sup>1</sup>:

- *Oulette v. Scott*, 11 FJVR 7-13, 2011 WL 2710724 (Fla. Cir. Ct. 2011).
  - 58-year-old Plaintiff was battered, resulting in sub-arachnoid hemorrhage, severe traumatic brain injury, quadriplegia, inability to communicate verbally, reduced comprehension to level of an 8-10 year old, and locked-in syndrome.
  - Total verdict: \$73,126,475.40

<sup>1</sup> Ex. 1, Verdict Reports in Locked-in cases

- Past medical expenses: \$1,426,465.40
  - Future medical expenses: \$6,700,000
  - Past pain and suffering: \$15,000,000
  - **Future pain and suffering: \$50,000,000**
  - Punitive damages: \$10,000
- *Whyte, et al. v. Mangra, et al.*, 23 Fla. J.V.R.A. 6:C1, 2013 WL 4034240 (Fla.Cir.Ct. May 17, 2013).
  - The Plaintiff suffered a cardiac arrest during an anesthetized chiropractic procedure, causing anoxic brain damage, which ultimately resulted in the Plaintiff slipping into a locked-in/vegetative state.
  - Total verdict: \$38,500,000
- *Confidential v. Confidential*, 2010 WL 1435400 (N.D. Cal. 2010).
  - The Plaintiff was diagnosed with locked-in syndrome resulting from the Defendant medical provider's failure to treat her low serum sodium levels. Plaintiff was in a coma for many months. She recovered somewhat but was left incontinent and lost significant sensory and motor functions, rendering her unable to move, walk, or speak normally.
  - Parties settled for \$20,000,000.
- *Nissen v. Dillard, et al.*, 27 Nat. J.V.R.A. 5:C3, 2011 WL 10550299 (Ill. Cir. Ct. 2011).
  - Defendant medical provider failed to monitor intracranial pressure, causing brain herniation, which resulted in locked-in syndrome in 41-year-old Plaintiff.
  - Parties settled for \$17,757,000.
- *Hippely v. Walgreens Co., et al.*, 22 Nat. J.V.R.A. 12:C5, 2007 WL 7952331 (Fla.Cir.Ct. Aug. 17, 2007).
  - Defendant's misfiling of the Plaintiff's prescription caused cerebral hemorrhage, resulting in locked-in syndrome. The plaintiff died approximately four years later from complications related to locked-in syndrome, including bedsores, urinary tract infections, and incontinence.
  - Total award: \$25,850,584
    - \$3,841,989 to the decedent's husband
    - \$6,639,168 to the decedent's oldest son
    - \$6,737,098 to the decedent's oldest daughter
    - \$6,790,577 to the decedent's youngest daughter
    - \$1,841,752 to the decedent's estate.
- *Elam v. Emro Mktg. Co.*, JVR No. 358164, 1998 WL 1019254 (Unknown State Ct. (Ga.) June 1995).
  - 15-year-old Plaintiff suffered locked-in syndrome after being struck by the Defendant's vehicle.
  - Parties settled for \$15,130,000.

## II. Noneconomic damages in FTCA cases involving significant injuries.

Federal courts nationwide have awarded substantial noneconomic damages to Plaintiffs in FTCA cases who have suffered significant injuries<sup>2</sup>:

- *Arroyo v. United States*, No. 1:07-cv-04912 (N.D. Ill. Apr. 2, 2010) (Document #93).
  - This was an FTCA case. Defendant medical providers failed to treat Plaintiff mother's bacterial infection during and after delivery, causing Plaintiff's newborn baby to contract the infection. This resulted in severe brain damage, which caused cerebral palsy, spastic quadriplegia, an inability to swallow, a seizure disorder, a communication deficit, and incontinence.
  - Total verdict: \$29,159,535.37
    - Past medical expenses: \$600,380
    - Future medical expenses: \$15,468,905.37
    - Future economic loss: \$3,990,250
    - Past and future pain and suffering: \$2,100,000
    - Past and future loss of a normal life: \$5,000,000
    - Disfigurement: \$2,000,000
- *Brown v. United States*, No. 2:03-cv-02282-JPM-sta (W.D. Tenn. Mar. 31, 2008) (Document #66).
  - This was an FTCA case. The Defendant medical provider failed to recommend appropriate supplements during the Plaintiff's pregnancy, causing a leaking fetal lesion of neuronal origin. This ultimately resulted in the Plaintiff's newborn daughter being born with cognitive defects and myelomeningocele, the most serious form of spina bifida.
  - Total verdict: \$13,690,648.17
    - Future lost wages: \$1,115,685
    - Physical impairment, disfigurement, and pain and suffering: \$2,450,000
    - Mental impairment, lost capacity for enjoyment of life, and mental pain and suffering: \$3,650,000
    - Past medical expenses: \$6,211
    - Future medical expenses: \$6,468,752.17
- *Bringas v. United States*, No. 1:08-cv-00435 (N.D. Ill. Jan. 25, 2010) (Document #53).

<sup>2</sup> Ex. 2, Verdict Summaries in FTCA cases

- This was an FTCA case. The Defendant medical provider failed to properly monitor fetal monitoring strips and negligently delayed delivering the Plaintiff's baby. As a result, the Plaintiff's newborn child suffered brain injuries and was born with cerebral palsy. The child subsequently was diagnosed with spastic quadriplegia, contractures, seizure disorder, and must be partially fed through a tube in his stomach.
- Total verdict: \$30,240,058
  - Future lost wages: \$1,964,081
  - Future medical expenses: \$19,275,977
  - Loss of normal life: \$5,000,000
  - Disfigurement: \$2,000,000
  - Pain and suffering: \$2,000,000
- *Phillips v. United States*, No. 05-760-PMF, 2008 U.S. Dist. LEXIS 96130 (S.D. Ill. Nov. 25, 2008).
  - This was an FTCA case. The 36-year-old Plaintiff's right arm was made withered, disfigured, useless, and caused her permanent continuous and extreme pain. These injuries were caused by the Defendant medical provider's failure to treat the Plaintiff's necrotizing fasciitis.
  - Total verdict: \$8,631,790
    - Past medical expenses: \$421,581
    - Future medical expenses: \$215,040
    - Past and future lost earnings: \$495,169
    - Past disability: \$500,000
    - Future disability: \$2,500,000
    - Disfigurement: \$500,000
    - Past pain and suffering and emotional distress: \$1,500,000
    - Future pain and suffering and emotional distress: \$2,500,000
- *Austin v. United States*, 02 ACTR 11-35, 2002 WL 32832551 (N.D. Ala. Sep. 30, 2002).
  - This was an FTCA case. The Defendant hospital failed to diagnose bacterial meningitis in the 5-weeks-old Plaintiff, resulting in a 21-day coma, which caused permanent neurological and physical damage, microcephaly, encephalomalacia, severe developmental delays, cerebral palsy, metatarsus adductus of the left foot, incontinence of bladder and bowel, inability to walk or talk, paralysis of lower limbs, and onset of self-destructive behavior.
  - Total verdict: \$20,343,627.36
- *L.G., etc., et al. v. United States*, No. 8:04-cv-01045-AHS-AN (C.D. Cal. Sep. 5, 2007) (Document #70).
  - This was an FTCA case. The Plaintiff mother and her 4-year old child were involved in an automobile accident caused by the Defendant. The mother suffered minor injuries, but her child suffered permanent injuries included tetraplegia, neurogenic bladder and bowel, severe and chronic

respiratory failure, ventilator dependence, dysfunctional spasticity, headaches, and osteoporosis.

- Total verdict: \$55,184,288
  - Child: \$54,143,370 total damages
    - Past medical expenses: \$3,840,350
    - Future medical expenses: \$18,667,553
    - Future lost wages: \$635,467
    - Past and future loss of enjoyment of life and pain and suffering: \$31,000,000 (\$1,000,000 per year for the Plaintiff's 31-year life expectancy)
  - Plaintiff mother: \$1,040,918
    - Past medical expenses: \$29,132
    - Out-of-pocket expenses: \$49,286
    - Future medical expenses: \$212,500
    - Non-economic damages: \$750,000

### **III. Noneconomic damages awarded in other jurisdictions for injuries similar to locked-in syndrome.**

Courts in states near New Hampshire, including those comprising the First Circuit, as well as courts in more-distant states have also awarded noneconomic damages for injuries similar to locked-in syndrome<sup>3</sup>:

- *Currier v. Quinn, Pro Ami*, JVR No. 481102, 2007 WL 4878143 (Unknown State Ct. (Vt.) Aug. 2007).
  - Plaintiff that was in an automobile collision suffered vertebra fractures at C5, C6, and C7, which resulted in incomplete quadriplegia.
  - Total verdict: \$21,751,308
    - Past medical expenses: \$862,999
    - Future medical expenses: \$14,897,060
    - Past lost wages: \$991,249
    - Pain and suffering: \$5,000,000
- *Heco v. Johnson Controls, Inc.*, JVR No. 1401130011, 2013 WL 7083114 (Vt.Super. June 28, 2013).
  - 45-year-old Plaintiff involved in an automobile accident suffered a spinal cord injury resulting in quadriplegia.
  - Total verdict: \$43,546,079, reduced by judge to \$36,948,123 in light of remittiturs, past settlements, and stipulations.
    - Pain and suffering: \$14,373,000
    - Past Medical expenses: \$621,171
    - Future medical expenses: \$26,522,032

<sup>3</sup> Ex. 3, Verdict Reports from other jurisdictions in cases involving significant injuries

- Past lost wages: \$355,024
  - Future lost wages: \$1,247,935
- *Dodge v. Tezel*, JVR No. 488800, 2007 WL 5433606 (Unknown State Ct. (Mass.) July 2007).
  - 42-year-old Plaintiff suffered injuries after being struck by an automobile, resulting in quadriplegia and degloving a large portion of his scalp.
  - Total verdict: \$16,000,000
    - Pain and suffering: \$13,129,671
    - Interest: \$2,870,329
- *Ippolito v. Weiser*, JVR No. 358105, 1998 WL 1019219 (N.Y. 1998).
  - 44-year-old Plaintiff suffered from moderate brain injury and seizure disorder due to a stroke caused by the Defendant's failure to prescribe Coumadin.
  - Total verdict: \$14,786,000
    - Pain and Suffering: \$8,000,000
    - Loss of household services (award to Plaintiff's spouse): \$5,500,000
    - There was a high/low agreement and the case ultimately settled for \$1,500,000 after trial.
- *Park v. Rizzuti, et al.*, No. 4061/05, 2007 WL 1039362 (N.Y. Sup. 2007).
  - 61-year-old Plaintiff suffered a rupture of an aneurysm that led to the development of a subarachnoid hemorrhage, which ultimately caused the Plaintiff to suffer permanent brain damage causing global impairment of her cognitive functions. The impairment affected her short- and long-term memory and impaired her ability to simultaneously perform multiple tasks.
  - Total verdict: \$43,000,000
- *Smith v. Montefiore Medical Center*, JVR No. 414038, 2003 WL 23519401 (N.Y. 2003).
  - Failure to diagnose heart condition caused the Plaintiff to suffer a stroke and a mild brain injury, resulting in memory loss and speech difficulties.
  - Total verdict: \$16,300,000
- *Totillo-Brier v. Haber, et al.*, No. 32757/01, 2008 WL 4488474 (N.Y. Sup. 2008).
  - Botched hysterectomy resulted in heart attack, stroke, a year-long coma (during which the Plaintiff's husband died without her knowledge), hemiplegia resulting in wheelchair confinement, and residual cognitive defects manifested by confusion, frustration, and major memory loss.
  - Total verdict: \$22,178,879.53, offset for release of co-defendant to \$20,585,991.58.

- *Dunn v. City of New York*, JVR No. 389936, 2000 WL 33594818 (Unknown State Ct. (N.Y.) Aug. 2000).
  - Plaintiff suffered injuries in a motorcycle accident, ultimately resulting in quadriplegia.
  - Total verdict: \$46,377,823, reduced by judge to \$22,261,355
    - Past Medical expenses: \$687,580
    - Future Medical expenses: \$13,190,243
    - Past lost wages: \$2,000,000
    - Future lost wages: \$5,500,000
    - Pain and Suffering: \$25,000,000
- *Pacheco v. Board of Education of the City of New York*, JVR No. 104970, 1992 WL 439026 (N.Y. Sup. Sep. 1992).
  - Plaintiff suffered quadriplegia after being shot by a fellow student.
  - Total verdict: \$30,036,000
    - Past lost wages: \$36,000
    - Pain and Suffering: \$6,000,000
    - Other: \$24,000,000
- *Ecks v. Nizen*, 1991 WL 718416 (Unknown State Ct. (N.Y.) Oct. 18, 1991).
  - Plaintiff was in an automobile collision and suffered severe brain damage, which left him quadriplegic and unable to speak or communicate.
  - Total verdict: \$46,800,000
- *Brown v. City of New York*, JVR No. 387578, 1999 WL 33298668 (Unknown State Ct. (N.Y.) May 1999).
  - A male suffered quadriplegia when he jumped off a pier, owned and maintained by the defendant city, and struck his head on the bottom of the ocean floor.
  - Total verdict: \$49,900,218
    - Pain and suffering: \$35,000,000
    - Other: \$14,900,218
- *Waldron v. City of New York*, JVR No. 510637, 2004 WL 5803096 (Unknown State Ct. (N.Y.) April 2004).
  - Plaintiff suffered a gunshot wound that caused pneumothorax and a vertebra fracture at T-1, which resulted in incomplete quadriplegia.
  - Total verdict: \$14,100,000
    - Past Medical expenses: \$6,050,000
    - Pain and Suffering: \$8,050,000
- *Diaz v. City of New York*, JVR No. 386991, 2001 WL 823268 (Unknown State Ct. (N.Y.) Jan. 2001).
  - Plaintiff suffered spinal injuries that resulted in quadriplegia when he dove off a pier at a beach area within the Defendant city.
  - Total verdict: \$26,320,959



- Future Medical expenses: \$18,320,959
  - Pain and Suffering: \$8,000,000
- *Barretto v. New York City Board of Education*, JVR No. 140634, 1994 WL 729135 (N.Y.Sup. Oct. 1994).
  - Plaintiff suffered a compression fracture at C6, resulting in quadriplegia and the loss of control of his bowel and bladder functions when he attempted to jump over a volleyball net at the Defendant's high school.
  - Total verdict: 18,834,000
    - Future Medical expenses: \$1,675,000
    - Past lost wages: \$125,000
    - Future lost wages: \$2,200,000
    - Pain and Suffering: \$8,500,000
    - Other: \$6,334,000
- *Gayle v. City of New York*, JVR No. 172726, 1994 WL 896235 (Unknown State Ct. (N.Y.) April 1994).
  - Plaintiff suffered quadriplegia when his vehicle went out of control and struck the rear of a tractor-trailer.
  - Total verdict: \$60,580,000
- *Schifelbine v. Foster Wheeler Corp., et al.*, JVR No. 419860, 2002 WL 34705242 (N.Y.Sup. June 30, 2002).
  - Plaintiff suffered a spinal nerve injury at C5-6 that resulted in quadriplegia, amputation of his right leg above the knee, fractures of both arms, and a skull fracture requiring approximately 16 surgical procedures when he fell through a skylight on the defendant's premises.
  - Total verdict: 23,368,209
    - Past medical expenses: \$1,174,774
    - Future medical expenses: \$15,366,529
    - Past lost wages: \$26,906
    - Future lost wages: \$300,000
    - Pain and suffering: \$6,500,000
- *Barnhard v. Cybex Intl., Inc.*, 29 NY. J.V.R.A. 3:C1, 2012 WL 7810951 (N.Y.Sup. Feb. 6, 2012).
  - Plaintiff was rendered quadriplegic when an exercise machine manufactured by the Defendant fell on her.
  - Total verdict: \$66,000,000
    - Past and future medical expenses: \$28,560,000
    - Pain and suffering: \$33,000,000
    - Past and future lost earnings: \$4,440,000
- *Brown & Brown v. City of New York*, 15 NY. J.V.R.A. 5:C1, 1998 WL 35468217 (N.Y.Sup. April 1998).

- Two plaintiff brothers suffered quadriplegia upon diving from Coney Island pier. The first plaintiff brother suffered cervical fractures that rendered him a quadriplegic when he dove from the pier and struck the bottom. The second plaintiff brother observed his brother floating face down in the water and dove in to rescue him, striking his head and suffering cervical fractures that also left him a quadriplegic.
- Total verdict: \$104,795,032
  - First Plaintiff brother: \$49,900,218 total damages
    - Past pain and suffering: \$15,000,000
    - Past medical expenses: \$536,000
    - Past lost wages: \$175,000
    - Future pain and suffering: \$20,000,000
    - Future lost wages: \$630,000
    - Future medical expenses: \$13,558,258
  - Second Plaintiff brother: \$54,894,813 total damages
    - Past pain and suffering: \$20,000,000
    - Past medical expenses: \$535,815
    - Past lost wages: \$72,000
    - Future pain and suffering: \$20,000,000
    - Future lost wages: \$300,000
    - Future medical expenses: \$13,986,998
- *Smolinski v. Smolinski*, JVR No. 1011030042, 2009 WL 7419662 (N.Y.Sup. Mar. 20, 2009).
  - Plaintiff suffered vertebra fractures at C6-7, with subluxation, that caused incomplete quadriplegia when the vehicle he was a passenger in crashed into a ditch.
  - Total verdict: \$40,226,376
    - Pain and suffering: \$40,226,376
- *Murach v. Island of Bob-Lo Co., et al.*, JVR No. 419224, 2003 WL 26096809 (N.Y.Sup. Dec. 3, 2003).
  - Plaintiff fell from a diving board and hit his head on the side of the pool at the Defendant's amusement park, causing quadriplegia.
  - Total verdict: \$58,600,000
    - Pain and suffering: \$58,600,000
- *Braun v. GMAC, et al.*, 7 NY. J.V.R.A. 11:C1, 1990 WL 10636079 (N.Y.Sup. May 9, 1990).
  - The Plaintiff was involved in an automobile accident and suffered a displaced cervical fracture that caused quadriplegia, a ruptured aorta, a ruptured omentum, and partial incontinence of the bladder and bowel.
  - Total verdict: \$20,110,500, reduced by judge to \$12,110,500.
    - Past pain and suffering: \$4,000,000, reduced by judge to \$1,000,000

- Future pain and suffering: \$8,000,000, reduced by judge to \$3,000,000
  - Future custodial care: \$5,040,000
  - Future medical care: \$730,500
  - Medical equipment and supplies: \$475,000
  - Past lost services paid to the Plaintiff's wife: \$515,000
  - Future lost services paid to the Plaintiff's wife: \$1,000,000
  - Past lost wages: \$35,000
  - Future lost wages: \$315,000
- *Pope v. NYCHHC, et al.*, 29 NY. J.V.R.A. 7:C1, 2012 WL 7811128 (N.Y.Sup. May 25, 2012).
  - Plaintiff experienced negative reactions to anti-seizure medication, but the medication was not discontinued by the Defendant medical provider. The Plaintiff's condition worsened, ultimately causing Stevens Johnson Syndrome, catastrophic brain damage, and quadriplegia.
  - Total verdict: \$121,000,000
    - Past pain and suffering: \$50,000,000
    - Future pain and suffering: \$30,000,000
    - Past and future lost wages: \$10,000,000
    - Past medical expenses: \$5,000,000
    - Future medical expenses: \$26,000,000
- *Sosa, pro ami v. Bronx Lebanon Hosp. Ctr.*, JVR No. 413677, 2003 WL 23519332 (Unknown State Ct. (N.Y.) Jan. 2003).
  - The Defendant medical provider failed to treat the 9-year-old Plaintiff's sickle cell disease, causing brain damage resulting in severe mental deficiency, quadriplegia, and necessitating the use of a feeding tube.
  - Total verdict: \$20,869,023
    - Past medical expenses: \$2,518,311
    - Future medical expenses: \$5,150,712
    - Future lost wages: \$2,200,000
    - Pain and suffering: \$11,000,000
- *Figueroa v. Montefiore Med. Ctr.*, 27 NY. J.V.R.A. 3:C3, 2009 WL 9053580 (N.Y.Sup. Sep. 2009).
  - This case involved the failure to promptly test for and treat an epidural abscess in the cervical area. As a result, the 53-year-old Plaintiff suffered temporary quadriplegia (after several months of difficult physical therapy he regained some movement of his upper limbs) but was permanently paralyzed from the chest-down. The Plaintiff was also rendered incontinent of both bladder and bowel.
  - Total verdict: \$22,903,000
    - Past lost wages: \$280,000
    - Past pain and suffering: \$3,000,000

- Future pain and suffering: \$12,000,000
  - Loss of services damages paid to the Plaintiff's wife: \$2,500,000
  - Future medical expenses: \$5,123,500
- *Bermudez v. Ruiz, et al.*, JVR No. 170319, 1996 WL 45463 (N.Y.Sup. Jan. 1996).
  - Plaintiff suffered left brain damage, requiring extensive surgery, and paralysis when he was struck by the Defendant's vehicle. The plaintiff was comatose for months, regained the use of his right hand only, and was rendered unable to speak.
  - Total verdict: \$80,500,000
- *Plaintiff v. Defendant*, 17 NY. J.V.R.A. 8:C1, 2000 WL 36096206 (N.Y.Sup. June 30, 2000).
  - The Defendant medical provider failed to properly anticipate, diagnose, and treat the Plaintiff's cerebral aneurysm and subarachnoid hemorrhage. As a result, the Plaintiff, in his early-20's, suffered severe brain damage resulting in quadriplegia, severe impairment of intellectual, emotional, and cognitive abilities, rendering him unable to speak, and necessitating permanent use of a feeding tube.
  - Total verdict: \$41,444,531
    - Past pain and suffering: \$9,000,000
    - Past lost wages: \$570,000
    - Future lost wages: \$3,922,581
    - Future medical expenses: \$7,951,950
    - Other: \$20,000,000
- *Saladino, et al. v. Stewart and Stevenson Svcs., Inc.*, 2010 WL 4926826 (E.D.N.Y. July 26, 2010).
  - Plaintiff was hit on the head by the faulty hood of the Defendant's vehicle, in which he was a passenger, causing quadriplegia.
  - Total verdict: \$40,190,417
    - Past pain and suffering: \$5,000,000
    - Past medical expenses: \$4,908,108.20
    - Past lost wages: \$532,309
    - Future pain and suffering: \$10,000,000
    - Future medical expenses: \$18,000,000
    - Future lost wages: \$1,000,000
- *McGill v. Roxborough Mem'l Hosp.*, 2011 WL 4068268 (Pa. Com. Pl. 2011).
  - Defendant health care providers failed to diagnose and timely treat the Plaintiff's viral encephalitis, causing severe injuries to her brain, including severe amnesia, loss of recent memory and loss of cognitive and linguistic function. The Plaintiff was rendered totally incapacitated.
  - Total verdict: \$23,000,000

- *Montanez v. Temple Health System, et al.*, 26 Pa. J.V.R.A. 12:C1, 2008 WL 9358353 (Pa. Com. Pl. 2008).
  - Delay in diagnosis of brain tumor caused brain herniation in 21-year-old Plaintiff, which required an emergency craniotomy. Ultimate injuries included permanent brain damage, blindness, significant cognitive impairment, incontinence of both bladder and bowel, and right-side paralysis rendering the Plaintiff wheelchair-bound.
  - Total verdict: \$11,200,545
- *Hutchinson v. Westinghouse Elevator Co.*, 1989 WL 535471 (Pa.Com.Pl.).
  - The Plaintiff was crushed by a 2,500 lb. elevator counterweight, severing his spinal cord in the cervical region and rendering him a ventilator-dependent quadriplegic with brain stem damage that prevents him from speaking.
  - Total verdict: \$20,900,000
    - Pain and suffering: \$8,700,000
    - Loss of consortium to the Plaintiff's wife: \$2,000,000
    - Other: \$10,200,000
- *Buongiovanni v. General Motors Corp.*, 12 Nat. J.V.R.A. 12:C1, 1997 WL 34884761 (Pa.Com.Pl. Sep. 1997).
  - Plaintiff brought strict liability action against General Motors for faulty design of the 1984 Chevrolet Chevette. The Plaintiff suffered a permanent spinal cord injury in an accident while driving the Chevette, rendering her a complete quadriplegic.
  - Total verdict: \$28,000,000
- *Martinez v. Honda*, 32 Pa. J.V.R.A. 8:C1, 2014 WL 4072189 (Pa.Com.Pl. June 26, 2014).
  - This was a products-liability action. The 57-year-old Plaintiff was rendered a quadriplegic when the car he was operating, manufactured by the defendant, rolled over and the Plaintiff's head hit the roof of the car.
  - Total verdict: \$55,325,714
    - Past and future noneconomic damages: \$25,000,000
    - Loss of consortium damages to the Plaintiff's wife: \$15,000,000
    - Future medical expenses: \$14,600,000
    - Past and future lost earnings: \$720,000
- *Tuski v. Petaccio, et al.*, JVR No. 416925, 2004 WL 6041581 (Pa.Com.Pl. Jan. 12, 2004).
  - Plaintiff highway-construction flagman suffered injuries resulting in quadriplegia when he was struck by a passing car.
  - Total verdict: \$75,683,906
    - Past medical expenses: \$1,683,906
    - Future medical expenses: \$18,000,000
    - Future lost wages: \$2,000,000

- Pain and suffering: \$29,000,000
  - Punitive damages: \$25,000,000
- *Eimers v. Honda*, 1993 WL 819693 (W.D.Pa. May 28, 1993).
  - This was a products-liability action. The Plaintiff was thrown from his motorcycle, which was designed by the Defendant, and suffered spinal injuries at C5 resulting in quadriplegia.
  - Total verdict: \$19,800,000
- *Mendez v. City of Philadelphia*, 2009 WL 1199239 (Pa.Com.Pl. Feb. 26, 2009).
  - Plaintiff was driving her automobile when a tree fell on her car, causing the Plaintiff to suffer a C6/C7 burst fracture, C6 ASIA B spinal cord injury, and superior endplate fracture of C7 vertebra, resulting in paraplegia.
  - Total verdict: \$61,000,000
- *Kizlinski v. McRae*, JVR No. 1210170017, 2012 WL 4959530 (R.I. Super. 2012).
  - Defendant ENT specialist performed a right superficial parotidectomy with facial nerve preservation and a second surgery a week later to remove an additional tumor mass from the Plaintiff's parotid gland, but failed to remove all of the tumor. Additional surgeries were required, resulting in full facial nerve paralysis, facial deformities, facial asymmetry, and collapse of the Plaintiff's ear canal.
  - Total verdict: \$15,349,014.10
    - Pain and suffering: \$10,000,000
    - Interest: \$5,349,041.10

### **CONCLUSION**

As a result of the Defendant's negligence, Michael Farley will be "locked-in" for the rest of his life. It is truly difficult to imagine a more devastating ailment. This condition has caused Mr. Farley immense physical pain, suffering, mental anguish, impairment, and physical disfigurement. Mr. Farley's family suffers along with him—his wife has lost the companionship and support of her husband, and his relationships with his children have been irrevocably changed.

Respectfully Submitted,

/s/ Jamal K. Alsaffar

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### **CERTIFICATE OF SERVICE**

By my signature above, I certify that a copy of this motion has been sent to the following on October 24, 14 via the Court's CM/ECF notice system:

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